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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,352	07/07/2003	Peter M. Bonutti	782-A03-003-1	7916
33771 7590 10/02/2007 PAUL D. BIANCO: FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI, & BIANCO P.L. 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 10/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/614,352

Applicant(s)

BONUTTI, PETER M.

Examiner

Diane Yabut

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/17/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,8-21 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,8-21 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This action is in response to applicant's amendment received 17 July 2007.

The examiner acknowledges the amendments made to the claims.

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 9, 21 recite the limitation "said anchor" in lines 9, 13, and 15, respectively. There is insufficient antecedent basis for this limitation in the claim.

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 8-11, 18-21, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Adams** (U.S. Patent No. **6,099,552**) in view of **Schwartz** (U.S. Patent No. **6,306,159**).

Claims 1-3, 8-11, 18-21, and 26: Adams discloses a cylindrical body portion **100** made of a metal (col. 2, lines 46-50) capable of use in soft tissue or bone defining a longitudinal central axis and including a first end and a second end, the second end

including a pointed end portion **102** being conical in shape and operative to pierce body tissue and form an opening when a force is applied against a trailing end of the cylindrical body in a direction extending along the longitudinal central axis of the cylindrical body, and having a central axis which is coincident with the longitudinal central axis of the cylindrical body, and a plurality of passages **104** being substantially parallel each extending through the body portion orthogonal to the longitudinal central axis which allow for the threading of a suture, wherein a first passage is formed proximate said second conical end portion, extending through the cylindrical body in a direction transverse to the longitudinal central axis of the cylindrical body, and a second passage extending through the cylindrical body substantially parallel to the first passage and disposed further from said conical end portion than said first passage (Figure 1).

Adams discloses the claimed device except for first and second suture sections being passed through and extend away from said first and second passages, respectively, the suture threaded through said first passage and second passage being operative to rotate said anchor when first suture section is tensioned and the second suture section is relaxed, and a retainer connected to the suture for maintaining the tension in the suture.

Schwartz teaches first and second suture sections (two sections of **40**) being passed through and extend away from said first **24** and second **26** passages, respectively, the suture threaded through said first passage and second passage being operative to rotate said anchor when first suture section is tensioned and the second suture section is relaxed, and a retainer connected to the suture for maintaining the

Art Unit: 3734

tension in the suture (Figures 4-7; abstract, col. 2, lines 14-16). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Adams with Schwartz, in order to close a tissue defect, thereby promoting healing (col. 4, lines 11-13).

3. Claims 12-17 rejected under 35 U.S.C. 103(a) as being unpatentable over **Adams** (U.S. Patent No. **6,099,552**) and **Schwartz** (U.S. Patent No. **6,306,159**), as applied to Claim 9 above.

Claims 12-17: Adams and Schwartz disclose the claimed device except for the cylindrical body being made of allogenic, autogenic, xenogenic, cortical bone, or a single piece of freeze dried bone, or made of a material selected from the group consisting of a metal, metal alloy, biodegradable material and bioerodible material, wherein the suture is secured relative to a body tissue being soft tissue or bone. It would have been obvious to one of ordinary skill in the art to use any of the above materials in either soft tissue or bone with the combined device of Adams and Schwartz, since it was known in the art that these materials are used with suture devices with soft tissue or bone.

Art Unit: 3734

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Adams** (U.S. Patent No. **6,099,552**) and **Schwartz** (U.S. Patent No. **6,306,159**), as applied to Claim 1 above, and further in view of **Ogiu** (U.S. Patent No. **4,235,238**).

Claim 27: Adams and Schwartz disclose the claimed device except for having the first passage being formed to extend partially through the cylindrical body and partially through the pointed end portion.

Ogiu teaches a tissue-suturing apparatus with a passage used for threading suture that is formed partially in body portion 1 and partially in the pointed end portion portion 3 (Figure 51). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Adams and Schwartz by having one of the passages being formed partially in the body portion and partially in the pointed end portion, since Applicant has not disclosed that having the passage being formed partially in the body portion and partially in the pointed end portion solves any stated problem or is for any particular purpose and it appears that the device of Adams and Schwartz would perform equally well with a passage formed partially in the body portion and partially at its pointed end.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-3, 8-21, 24, and 25 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DY

A handwritten signature in black ink, appearing to read "M. J. Hayes", with a stylized, cursive script.

MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER